

PROCEEDINGS AGAINST ANTHONY MARCELLO FOR CONTEMPT OF THE SENATE

FEBRUARY 21 (legislative day, JANUARY 29), 1951.—Ordered to be printed.

Mr. KEFAUVER, from the Special Committee To Investigate Organized Crime in Interstate Commerce, submitted the following

REPORT

[To accompany S. Res. 83]

The Special Committee To Investigate Organized Crime in Interstate Commerce, as created and authorized by the United States Senate by Senate Resolution 202, Eighty-first Congress, second session, caused to be issued a subpoena to Anthony Marcello, of Marrero, La. The said subpoena directed Anthony Marcello to be and appear before the said committee on January 25, 1951, at 9:30 a. m. in room 245, Main Post Office Building, New Orleans, La., then and there to testify touching matters of inquiry committed to said committee and not to depart without leave of said committee. The date of the subpoena was the 13th day of January 1951. Attendance pursuant to said subpoena was thereafter duly postponed to January 26, 1951, at which time the witness appeared. The subpoena served upon said Anthony Marcello is set forth as follows:

Mar. No. 813 CR.

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

To ANTHONY MARCELLO, 680 Barratarria Boulevard, Marrero, La., Greeting:

Pursuant to lawful authority, you are hereby commanded to appear before the Senate Committee To Investigate Organized Crime in Interstate Commerce of the Senate of the United States, on January 25, 1951, at 9:30 a. m., at their committee room 245, Main Post Office Building, New Orleans, La., then and there to testify what you may know relative to the subject matters under consideration by said committee. And bring with you all books, records, and supporting documents relating to your income and disbursements from January 1, 1944, to date; all records relating to assets and/or interest in property, either real, personal, or mixed; or interest in legal entities during the aforesaid period; and copies of Federal income-tax returns during the aforesaid period.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To United States marshal, New Orleans, La., to serve and return.

Given under my hand, by order of the committee, this 13th day of January in the year of our Lord one thousand nine hundred and fifty-one.

ESTES KEFAUVER,
Chairman, Senate Committee To Investigate Organized Crime in Interstate Commerce.

The said subpoena was duly served as appears by the return made thereon by Joseph Burglass, deputy United States marshal, who was duly authorized to serve the said subpoena. The return of the service by the said Joseph Burglass, deputy United States marshal, being endorsed thereon is set forth as follows:

JANUARY 19, 1951.

I made service of the within subpoena by handing same in person to the within-named Anthony Marcello, at 335 Huey P. Long Avenue, Gretna, La., at 10:15 o'clock a. m., on the 16th day of January 1951.

LOUIS F. KNOP, Jr.,
United States Marshal.
By JOSEPH BURGLASS, Deputy.

The said Anthony Marcello, pursuant to said subpoena and in compliance therewith, appeared before the said committee to give such testimony as required by virtue of Senate Resolution 202, Eighty-first Congress, second session. Anthony Marcello having appeared as a witness and having been asked questions, which questions were pertinent to the subject matter under inquiry, made answers as appeared in the records of the hearing on January 26, 1951, at room 245, Main Post Office Building, New Orleans, La., which record is annexed hereto and made a part hereof and designated "Annex I." The said Anthony Marcello having appeared as a witness arbitrarily refused to produce the books and records called for in the subpoena set forth above.

As a result of said Anthony Marcello's refusal to produce books and records and refusal to answer the questions pursuant to the said inquiry propounded to Anthony Marcello pertinent to the subject matter which under Senate Resolution 202, Eighty-first Congress, second session, the said committee was instructed to investigate, and the refusal of the witness to produce books and records and to answer questions as set forth in annex I, is a violation of the subpoena under which the witness was directed to appear and produce books and records and to answer pertinent questions to the subject under inquiry, and his persistent and illegal refusal to produce books and records and to answer the aforesaid questions deprived the committee of necessary and pertinent testimony and places this witness in contempt of the United States Senate.

The subcommittee hearing at which said witness refused to produce books and records and to answer said questions was duly authorized by a resolution of the said committee, as set forth below:

SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE
COMMERCE

MINUTES OF A COMMITTEE MEETING, DECEMBER 22, 1950

At an executive session of the committee held on December 22, 1950, the following resolution was adopted:

"Resolved, That the chairman of this committee be, and hereby is, authorized at his discretion to appoint one or more subcommittees of one or more Senators of whom one member shall be a quorum for the purpose of taking testimony and all other committee acts, to hold hearings at such time and places as the chairman might designate, in furtherance of the committee's investigations of organized crime, in the vicinities of the cities of Tampa, Fla., and New Orleans, La."

ESTES KEFAUVER, Chairman.
HERBERT R. O'CONOR.
LESTER C. HUNT.

In accordance with the resolution of December 22, 1950, the chairman designated himself as a subcommittee of one to swear witnesses and to hear testimony at New Orleans, La., on January 25 and 26, 1951.

After reviewing the testimony and other facts as set forth herein, the committee adopted a resolution, as set forth below:

SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE

MINUTES OF A COMMITTEE MEETING JANUARY 29, 1951

The committee met at 2:30 p. m. in the District of Columbia Committee Room. There were present the chairman and Senators Hunt, O'Connor, Tobey, and Wiley.

The chairman presented to the committee the minutes of the committee meetings of January 25 and 26, 1951, together with a resolution made on December 22, 1950. The chairman stated to the committee that the chairman had designated a subcommittee to hear continued testimony in connection with organized crime in the city of New Orleans, La., pursuant to the resolution of December 22, 1950, the subcommittee consisting of the chairman.

The chairman then presented to the committee the minutes of said subcommittee meetings of January 25 and 26, 1951, held in room 245, Main Post Office Building, New Orleans, La.

The chairman stated to the committee that the witness Anthony Marcello repeatedly, consistently, and arbitrarily had refused to produce books and records and to answer questions put to him throughout counsel and chairman's examination of said witness on January 26, 1951, and that his refusal, therefore, was improper and contemptuous.

The chairman presented to the committee a draft report on the entire matter for the committee's consideration and the committee duly adopted the said report and instructed the chairman to present said report to the United States Senate.

Therefore, upon motion of Senator O'Connor, duly seconded by Senator Tobey, it was duly resolved that the committee present to the United States Senate, for its immediate action, a resolution requiring the United States attorney for the eastern district of Louisiana to proceed against the said Anthony Marcello in the manner and form provided by law.

ANNEX I

INVESTIGATION OF ORGANIZED CRIME IN INTERSTATE
COMMERCE

UNITED STATES SENATE,
SPECIAL COMMITTEE TO INVESTIGATE
ORGANIZED CRIME IN INTERSTATE COMMERCE,
New Orleans, La., January 26, 1951.

REPORTER'S TRANSCRIPT

The committee met at 9:30 a. m., Friday, January 26, 1951, in room 245, Main Post Office Building, Senator Estes Kefauver (chairman) presiding.

Present: Senator Kefauver.

Also present: Downey Rice, Esq., associate counsel; Alfred M. Klein, Esq., associate counsel; George Martin, investigator; and Ralph W. Mills, investigator.

STATEMENT OF ANTHONY MARCELLO, 620 ROMAIN STREET, GRETNA, LA. (REPRESENTED BY G. WRAY GILL, ESQ., AND WILLIAM C. ORCHARD, ESQ.)

(Anthony Marcello was sworn by the chairman.)

The CHAIRMAN. Anthony Marcello. What is your address, Mr. Marcello?

Mr. GILL. If Your Honor please, prior to proceeding with the questioning of this witness—

The CHAIRMAN. We will let the record show that Mr. G. W. Gill and William C. Orchard are appearing as counsel for Anthony Marcello.

Mr. GILL. Yes, sir.

If Your Honor please, prior to proceeding with the questioning of the witness we wish to offer the objection we have heretofore made with reference to his brother, Carlos Marcello; that is, unless ordered to do so by the chairman we refuse to proceed with the hearing because of the absence of a quorum, and should Your Honor order us to proceed it will be over our objection.

The CHAIRMAN. Yes. All right. The same objection that you noted to the proceedings in the Carlos Marcello matter will be noted here.

Mr. GILL. All of the objections, sir?

The CHAIRMAN. Yes; that is right.

Mr. GILL. I would like to add this objection, too, please, sir, that as much as the Constitution provides that one shall have the privilege of free speech, we respectfully submit and suggest to you, Senator, that it works in the alternative, that if he has the privilege of free speech he should not be forced to answer a question that does not meet with his desire to answer because in the alternative if he refuses to answer then of course he would face the contempt proceedings. For that reason we also refuse to proceed with the hearing, and, should Your Honor order it be proceeded with, it will be over our objection.

The CHAIRMAN. All right. We will note your objection.

Mr. GILL. Thank you, sir.

The CHAIRMAN. Of course, I think in that connection that claiming of free speech also gives the right not to testify anything before a hearing, and what not.

Mr. GILL. Yes, sir.

The CHAIRMAN. Anyway, your objection is noted.

Mr. GILL. Yes, sir.

The CHAIRMAN. All right, let's proceed.

Give us your address, Mr. Marcello.

Mr. MARCELLO. 620 Romain Street, Gretna, La.

The CHAIRMAN. Before we proceed with Mr. Marcello, let the chairman ask one or two questions.

You are a brother of Carlos Marcello?

Mr. MARCELLO. That is right.

The CHAIRMAN. Answer up so we can hear you.

Mr. MARCELLO. That's right.

The CHAIRMAN. Now how many of you boys are there?

Mr. MARCELLO. Seven.

The CHAIRMAN. Anthony, Carlos. Name the others?

Mr. MARCELLO. Anthony, Carlos, Joseph, Pete, Sam, and Pasquale.

The CHAIRMAN. All right; you proceed, Mr. Rice.

Mr. RICE. Where were you born, Mr. Marcello?

Mr. MARCELLO. With due respect to the committee, I am going to refuse to answer any and all questions other than my name and place of residence, on the grounds that they may tend to incriminate me. I also refuse to produce any documents, records, or papers on the grounds that they may tend to incriminate me.

Mr. RICE. Now, sir, are you under any indictment at the particular time?

Mr. MARCELLO. I refuse to answer that question on the grounds that it may tend to incriminate me.

The CHAIRMAN. Well, you are directed to answer that question.

Mr. GILL. May I offer an objection at this time, Your Honor? On yesterday a statement was made by the Senator, and I make this statement with all due deference and respect to the committee and without tending to in any wise criticize the Senator's opinion but, nevertheless regardless of its predication the Senator's opinion, and doubtless the opinion of this committee, was as stated by the Senator yesterday and recorded in the papers and heard of course by me in the courtroom, that his brother was one of the top criminals of America.

The CHAIRMAN. If there is any doubt about that I want to restate it now, too, certainly.

Mr. GILL. I appreciate that is Your Honor's studied opinion and, inasmuch as that be true, the same blood of that man runs in this man's veins; the same father and the same mother, and I now ask Your Honor to defer further questioning of this witness as it is obvious that his answers will be the same as his brother, because, sir, for him to answer any question, knowing the process of investigation that has been instituted, would be seeking to make him an innocent link in a chain of circumstances that might result in evidence being offered that might tend to be a connecting link in what appears to be an investigation concerning his brother,

particularly as regards the immigration situation as investigated by Your Honor on yesterday, and I respectfully ask Your Honor to please not ask this witness any further questions if in asking the witness the questions it is the intention of Your Honor and of the members of your committee to add count after count of contempt against this witness for his refusal to answer further questions.

The CHAIRMAN. Well, now, Mr. Gill, counsel for the committee will of course ask the witness any questions he thinks should be calculated to bring out the matters that we know about the witness.

Mr. GILL. Certainly, sir.

The CHAIRMAN. I want to say, though, that it will be our fervent hope that because one member of the family happens to be in a bad situation so far as criminality is concerned that every other member of the family is or all his brothers. This man seems to be a younger brother, and I hope, to begin with, that he might be willing to follow in a different course and that he might not want to follow the same action that his brother did on yesterday.

But I think we have had enough of that. Let's get on.

Mr. GILL. May I make a further statement to Your Honor? It won't take but a moment.

The CHAIRMAN. All right.

Mr. GILL. I might say to Your Honor if he were called into a court of justice, no court in the world, I believe, would pretend that this man should be a witness directly or indirectly against his brother, and on yesterday Your Honor stated, in answer to one of the questions or as a gratuitous remark, that Joseph and Anthony were known criminals. Now, I might say to Your Honor that Joseph and Anthony have never been convicted at any time in their life.

The CHAIRMAN. Well, let's let the witness testify about that, Mr. Gill.

Mr. GILL. I only say this, sir, to show that your source of information—

Mr. RICE. How do you know that, sir?

The CHAIRMAN. Well, that's all right.

Mr. RICE. How do you know whether he has or not?

Mr. GILL. Well, I know, sir. I have checked the records.

Mr. RICE. You know that on information and belief; don't you?

Mr. GILL. No, sir. I have checked the records.

Mr. ORCHARD. That is all you have.

Mr. GILL. I definitely do know, Mr. Rice.

Mr. RICE. I have the right to ask the witness.

The CHAIRMAN. Mr. Gill, I think we have had enough of that. If he wants to tell about the matter, all right, but we want him to testify.

Go ahead, Mr. Rice.

Mr. RICE. Now, sir, you have asserted your privilege as to the questions as to whether or not you are under indictment. Are you under indictment at this time?

Mr. MARCELLO. I refuse to answer that question.

The CHAIRMAN. Well, the Chair orders you to answer that question.

Mr. MARCELLO. I refuse to answer that question on the grounds that it might tend to incriminate me.

Mr. RICE. In refusing to answer do you fear prosecution from a Federal or State offense?

Mr. GILL. If Your Honor please, I submit it would be asking a man to say what he is guilty of. You are asking that he testify against himself, and I respectfully object to the question.

The CHAIRMAN. Well, Mr. Gill, of course the law is that it cannot be a fantastic objection, unless it is an effort to exercise that constitutional privilege, unless he has some particular crime in mind. The Senate and the court will have to try to judge the questions in the light of what the allegations against him, or the charges against him that he is afraid of, are.

So that is an entirely proper question.

Mr. GILL. I appreciate Your Honor's position. It is rather a difficult one. But I say it is asking a man to say what he is guilty of, to confess.

The CHAIRMAN. We are trying to find out—he is claiming his privilege—we are trying to find out just what crime it is that he thinks might incriminate him.

Mr. GILL. Well, Your Honor will note my objection?

The CHAIRMAN. Yes; we will note your objection.

Mr. GILL. Thank you, sir.

Mr. RICE. Now, sir, is it a Federal or State offense that you have in mind?

Mr. MARCELLO. I refuse to answer that question.

The CHAIRMAN. Can it be noted that on these questions, unless otherwise stated by the chairman, that the chairman has ordered him to answer where he refuses to answer?

Mr. GILL. Yes, sir.

Mr. ORCHARD. Yes, sir.

The CHAIRMAN. You understand that, Mr. Marcello?

Mr. MARCELLO. Yes.

Mr. GILL. And would it also be noted if he just says "I refuse to answer," that it will be for the same reason heretofore given?

The CHAIRMAN. Yes, sir; we will agree to that.

Mr. GILL. Thank you, sir.

Mr. RICE. Did the transaction from which you fear prosecution involve yourself or others?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did the transaction from which you fear prosecution occur more than 10 years ago?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Less than 10 years ago?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Now, sir, you were called upon to produce certain records. Do you have those?

Mr. MARCELLO. No.

Mr. RICE. On what grounds do you refuse to produce those?

Mr. MARCELLO. On the grounds that they may tend to incriminate me.

Mr. RICE. In a Federal or State offense?

Mr. MARCELLO. I refuse to answer that.

Mr. RICE. What is your business, sir?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. How old are you?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Are you married?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Are you single?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Are you a citizen?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Are you an alien?

Mr. MARCELLO. I refuse to answer.

Mr. MARCELLO. Were you born in Africa?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. In 1946 were you associated with Joe Poretto?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you know Joe Poretto?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. Now, for the record, Joe Poretto is the man who started up the Southern News Publishing Co., about 1946.

Mr. RICE. Have you ever heard of the wire service?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Have you ever heard of News Service?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. In 1946 did you receive \$300 from the News Service in New Orleans, La.?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Were you not associated in the News Service known as the Southern News & Publishing Co.?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Were you not associated with Poretto, Ralph Emory, of Cicero, Ill., Frank Capello, Anthony Carollo, and your brother, Joseph Marcello, Jr., in the wire service, 1946?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Now then, sir; do you know a Mr. J. J. Fogarty?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. Were you not associated in the operation known as the Daily Sports News?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did you not participate in a partnership known as the Daily Sports News in 1947?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did you not have 37½ percent?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did you not have 37½ percent of the business known as the Daily Sports News?

Mr. MARCELLO. I refuse to answer that.

Mr. RICE. Now, sir; did you not receive \$3,172.73 from your partnership in the News Service in 1946?

Mr. ORCHARD. If that is from his income-tax records we object on the ground it is violative of the President's directive.

The CHAIRMAN. It is a question that the witness is asked.

Mr. ORCHARD. Will you please note our objection?

The CHAIRMAN. Yes; we note your objection.

Mr. RICE. What is your answer?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. Did he receive anything?

Mr. RICE. Did you receive, or were you paid any money, by the News Service in 1946?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Now, sir, in 1947, were you paid any money by any news service?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Specifically, the Daily Sports News.

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did you not receive \$8,782.59?

Mr. ORCHARD. The same objection, Your Honor.

The CHAIRMAN. Let it be noted.

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you have an interest in a record shop?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Have you had an interest in a record shop?

The CHAIRMAN. Now, for the record, what record shop are you talking about, Mr. Rice? Are you trying to bring out?

Mr. RICE. A record shop personally owned by the witness on Huey P. Long Avenue in Gretna.

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. You mean a record shop, with phonograph records?

Mr. ORCHARD. I submit that counsel is testifying. We should identify the place or ask the man what is the name of the business, and so on.

The CHAIRMAN. All right, Mr. Orchard, that is just what we are trying to find out, what he had in mind asking about. Go ahead.

Mr. RICE. Do you have an interest in the New Orleans Cigarette Services Corp.?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Did you have an interest in 1948 in the New Orleans Cigarette Service Corp.?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Were you paid any money by the New Orleans Cigarette Service Corp.?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you have an interest in any gambling club?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you have any legitimate business?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Specifically, do you have an interest in the New Southport Club?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Are you not a partner in the operation known as the New Southport Club in Jefferson Parish?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Have you not been paid a substantial sum of money from the New Southport Club in Jefferson Parish?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Have you ever been arrested?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Have you ever been in jail?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Have you ever served time in Atlanta?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. All right; let's get on.

Mr. RICE. Do you know a man by the name of Eddie Mooney?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you know Vic Trapani?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Do you know Tony Trapani?

Mr. MARCELLO. I refuse to answer.

Mr. RICE. Is it not true that you accompanied Eddie Mooney, a representative of the S. & G. Gambling Syndicate, in Florida to New Southport Gambling Casino along with Vic and Tony Trapani during the months of February and March of 1949?

Mr. MARCELLO. I refuse to answer that.

The CHAIRMAN. Have you ever been engaged in the narcotics business?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. Do you and your brother Carlos have an interest in some sailing ships or boats in which you brought in narcotics or marijuana?

Mr. MARCELLO. I refuse to answer that question.

Mr. RICE. What is your father's name?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. Have you ever been out of the State of Louisiana?

Mr. MARCELLO. I refuse to answer.

The CHAIRMAN. Well, there is no use going on with this witness any further.

Well, with whatever strength we have we will certainly try to recommend that you get the full extent of the law, sir. That will be all.

(Witness excused.)

ANNEX II

The committee has received the following memorandum from its associate counsel, which sets forth the legal opinion of its staff with reference to the contempts committed by Anthony Marcello:

JANUARY 29, 1951.

Memorandum to Senator Estes Kefauver, chairman, re contempt of Anthony Marcello (S. Res. 83):

I have examined the record of the testimony of Anthony Marcello in addition to hearing it at the time it was given, and it is my opinion, which has previously been conveyed to the committee, that the refusal by Anthony Marcello to bring books and records, and to answer questions was contemptuous of the United States Senate and its Special Committee to Investigate Organized Crime in Interstate Commerce.

As associate counsel of the committee, with the advice and concurrence of the committee's legal staff, I have advised the committee and now certify that the contempts complained of are, in my opinion, punishable as a matter of law. In those instances where the witness asserted a claim of privilege, it is my opinion that the claim was not made in good faith inasmuch as there was no reasonable relationship between the questions asked and a line of proof which might incriminate the witness under any Federal statute.

In certifying contempt proceedings, this committee and its counsel have carefully distinguished between refusals to answer based on an arbitrary or fanciful claim of privilege from refusals to answer questions where a claim of privilege might be raised with even a minimum possibility that the witness might be incriminated under any of the laws of the United States.

DOWNEY RICE, Associate Counsel.